

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RESURRECTION SCHOOL, ET AL.,)	
Plaintiffs,)	
)	No. 1:20-cv-1016
-v-)	
)	Hon. Paul L. Maloney
ELIZABETH HERTEL, ET AL.,)	
Defendants.)	
_____)	

ORDER REGARDING MICHIGAN PUBLIC ACT 87 OF 2021

On September 3, 2021, Plaintiffs filed a motion for a preliminary injunction seeking to enjoin Defendants from enforcing an Ingham County Health Department emergency order requiring all persons in educational settings to wear face coverings (ECF No. 32). The Court heard oral argument on this motion on September 23 and 28, 2021. The Court has yet to issue an order regarding the motion for preliminary injunction.

Since the parties presented their arguments, Michigan Governor Gretchen Whitmer has signed Senate Bill No. 82 into law. That bill is now Michigan Public Act No. 87 of 2021.¹ Section 250 of Public Act No. 87 reads, “The director or local health officer shall not issue or enforce any orders or other directives that require an individual in this state who is under the age of 18 to wear a face mask or covering.” 2021 Mich. Pub. Acts 87, § 250. Further, Section 1222(4) states that if a local health officer has an emergency order in effect under section 2453 of the Michigan Public health as of October 1, 2021, the state will withhold the funds appropriated for local public health services. *Id.* § 1222(4). As of the date of this order,

¹ 2021 Mich. Pub. Act No. 87 is available at <https://www.legislature.mi.gov/documents/2021-2022/publicact/pdf/2021-PA-0087.pdf>.

the Ingham County Health Department emergency order at issue in this case is still effective.² Therefore, it appears that the Ingham County Health Department is in violation of Section 250 of 2021 Mich. Pub. Act No. 87.

In addition, Governor Whitmer has questioned the constitutionality of Section 250 of Public Act No. 87. *See* Craig Mauger, *Whitmer's Office: Ban on Orders Requiring Masks for Kids Unconstitutional*, Detroit News (Sept. 24, 2021, 4:16 PM) <https://www.detroitnews.com/story/news/politics/2021/09/24/whitmers-office-ban-mask-mandates-kids-unconstitutional/5849503001/> (quoting Governor Whitmer's spokesperson who labeled Section 250 "dangerous" and stated that "the governor will declare [Section 250] unenforceable"). In Governor Whitmer's letter to the Michigan legislature indicating that she signed Senate Bill No. 82, she also listed the provisions of the bill that she line-item vetoed because they "violate the Michigan Constitution." Letter from Gretchen Whitmer, Governor of Mich., to the Michigan Legislature (Sept. 29, 2021), *available at* <http://www.legislature.mi.gov/mileg.aspx?page=CurrentVersionAmendment&cvFileName=2021-SCVBS-0082-00I552.pdf>. In that letter, she stated that the Michigan legislature does not have the power to "unwind the Public Health Code in a budget bill or un-appropriate funds because they take issue with the actions of local health departments." *Id.* Thus, she stated that such language is unconstitutional, and she will not allow it to take effect. *Id.* Yet, Governor Whitmer did not line-item veto Section 250, meaning that despite her statements

² *See Coronavirus (COVID-19)*, Ingham Cty. Mich. [https://hd.ingham.org/DepartmentalDirectory/CommunicableDisease/Coronavirus\(COVID19\).aspx#8826305-ingham-county-emergency-orders](https://hd.ingham.org/DepartmentalDirectory/CommunicableDisease/Coronavirus(COVID19).aspx#8826305-ingham-county-emergency-orders) (last updated Oct. 12, 2021).

regarding the constitutionality of Section 250, that provision may presumably be part of the effective language in 2021 Mich. Pub. Act 87.

In order for this Court to make an informed decision on Plaintiffs' motion for preliminary injunction (ECF No. 32), the Court needs to know how, if at all, the passage of Senate Bill No. 82, assigned Public Act No. 87, affects the Ingham County Health Department emergency order at issue in the instant litigation.

Accordingly,

IT IS HEREBY ORDERED that the parties must provide further briefing on the language of 2021 Mich. Pub. Act 87 that affects local health departments and the constitutionality of such language by **October 29, 2021**.

IT IS SO ORDERED.

Date: October 15, 2021

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge